

Jersey Law 12/1985

**SERVICE OF PROCESS AND TAKING OF EVIDENCE
(AMENDMENT) (JERSEY) LAW, 1985**

A LAW to amend the Service of Process and Taking of Evidence (Jersey) Law, 1960, sanctioned by Order of Her Majesty in Council of the

20th day of MARCH, 1985

(Registered on the 12th day of April, 1985).

STATES OF JERSEY

The 13th day of March, 1984.

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law: -

ARTICLE 1

The long title of the Service of Process and Taking of Evidence (Jersey) Law, 1960¹ (hereinafter referred to as “the principal Law”) shall be amended by inserting after the word “pending” the words “or in contemplation”.

ARTICLE 2

The heading of Part II of the principal Law² shall be amended by inserting after the word “pending” the words “or in contemplation”.

¹ Tome VIII, page 843.

² Tome VIII, page 846.

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ARTICLE 3

The principal Law shall be amended by repealing Articles 3 and 4³ and substituting the following Articles –

“ARTICLE 3

**Application to Royal Court for assistance in
obtaining evidence for civil proceedings in a court
or tribunal outside the Island**

Where an application is made to the Royal Court for an order for evidence to be obtained in the Island and the court is satisfied –

- (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal (‘the requesting court’) exercising jurisdiction in a country or territory outside the Island; and
- (b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated,

the Royal Court shall have the powers conferred on it by the provisions of this Part of this Law.

ARTICLE 4

**Power of Royal Court to give effect to application
for assistance**

(1) Subject to the provisions of this Article, the Royal Court shall have power, on any such application as is mentioned

³ Tome VIII, page 846.

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in Article 3 of this Law, by order to make such provision for obtaining evidence in the Island as may appear to the court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the court may consider appropriate for that purpose.

(2) Without prejudice to the generality of paragraph (1) of this Article but subject to the provisions of this Article, an order under this Article may, in particular, make provision –

- (a) for the examination of witnesses, either orally or in writing;
- (b) for the production of documents;
- (c) for the inspection, photographing, preservation, custody or detention of any property;
- (d) for the taking of samples of any property and the carrying out of any experiments on or with any property;
- (e) for the medical examination of any person;
- (f) without prejudice to sub-paragraph (e) of this paragraph, for the taking and testing of samples of blood from any person.

(3) An order made under this Article shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purpose of civil proceedings in the Royal Court (whether or not proceedings of the same description as those to which the application for the order relates); but this paragraph shall not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than on oath where this is asked for by the requesting court.

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- (4) An order under this Article shall not require a person –
- (a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in his possession, custody or power; or
 - (b) to produce any documents other than particular documents specified in the order as being documents appearing to the Royal Court to be, or to be likely to be, in his possession, custody or power.

ARTICLE 4A

Privilege of witnesses

- (1) A person shall not be compelled by virtue of an order under Article 4 of this Law to give any evidence which he could not be compelled to give –
- (a) in civil proceedings in the Island; or
 - (b) subject to paragraph (2) of this Article, in civil proceedings in the country or territory in which the requesting court exercises jurisdiction.
- (2) Sub-paragraph (b) of paragraph (1) of this Article shall not apply unless the claim of the person in question to be exempt from giving the evidence is either –
- (a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or
 - (b) conceded by the applicant for the order;

and where such a claim made by any person is not supported or conceded as aforesaid he may (subject to the other provisions of

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this Article) be required to give the evidence to which the claim relates but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.

(3) Without prejudice to paragraph (1) of this Article, a person shall not be compelled by virtue of an order under Article 4 of this Law to give any evidence if his doing so would be prejudicial to the security of the British Islands or any of them; and a certificate signed by or on behalf of the Lieutenant-Governor to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of the fact.

(4) In this Article references to giving evidence include references to answering any question and to producing any document and the reference in paragraph (2) of this Article to the transmission of evidence given by a person shall be construed accordingly.

ARTICLE 4B

Power of Royal Court to assist in obtaining evidence for international proceedings

(1) The provisions of this Part of this Law other than this Article shall apply to the Court of Justice of the European Communities.

(2) The States may by regulations direct that, subject to such exceptions, adaptations or modifications as may be specified in the regulations the provisions of this Part of this Law shall have effect in relation to international proceedings of any description specified in the regulations.

(3) In this Article ‘international proceedings’ means proceedings before the International Court of Justice or any other court, tribunal, commission, body or authority (whether consisting of one or more persons) which, in pursuance of any

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international agreement or any resolution of the General Assembly of the United Nations, exercises any jurisdiction or performs any functions of a judicial nature or by way of arbitration, conciliation or inquiry or is appointed (whether permanently or temporarily) for the purpose of exercising any jurisdiction or performing any such functions.

ARTICLE 4C

Interpretation of Part II

In this Part of this Law –

‘civil proceedings’ in relation to the requesting court, means proceedings in a civil or commercial matter;

‘property’ includes any land, chattel or other corporeal property of any description;

‘request’ includes any commission, order or other process issued by or on behalf of the requesting court; and

‘requesting court’ has the meaning given in Article 3 of this Law.”.

ARTICLE 4

The principal Law shall be amended by repealing Article 7⁴ and substituting the following Article –

⁴ Tome VIII, page 847.

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“ARTICLE 7

False unsworn statement

If any person, in giving any testimony (either orally or in writing) otherwise than on oath, where required to do so by an order under Article 4 of this Law, makes a statement –

- (a) which he knows to be false in a material particular; or
- (b) which is false in a material particular and which he does not believe to be true,

he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or a fine or both.”.

ARTICLE 5

This Law may be cited as the Service of Process and Taking of Evidence (Amendment) (Jersey) Law, 1985.

E.J.M. POTTER

Greffier of the States.